

Remarks/Argument

Response to § 102 Rejections

Claims 1-9, 11-21, and 23-25 have been rejected as anticipated under 35 USC Section 102 (b) by *Hebrank*, U.S. Patent Application Publication 2002/0014444.

A detailed review of *Hebrank* reveals this reference describes an apparatus for classifying a plurality of poultry eggs, means for detecting the temperatures of the eggs and a means for employing the temperature detection for classifying and determining the opacities of the eggs. See, for example, page 1, sections 0011-0013, as referenced in the Office Action. As further discussed on page 6, sections 0075 et seq., referring to FIG. 2 and 3, there is described a “flat 12” of eggs which rides on a conveyor 7A equipped with drive chains 13 and a motor 14 which moves along guide rails 22, or a polymeric conveyor belt of 3/8” thick in diameter, as is reportedly found on egg injection equipment, such as referenced EMBREX INOVOJECT egg injection apparatus. Infrared emitters 17, detectors 27 and infrared thermal sensors 37 are employed to generate signals to actuate and deactuate emitters, and to receive and process signals from detectors with associated data management and storage with respect to each egg.

As additionally explained in *Hebrank*, for example, on page 5, sections 0061 et seq., an infrared light detector mounting block 21 composed of an opaque black plate is fitted with mounted infrared detectors. As further explained, the apparatus is specifically configured, “ so that the distance ‘a’ from the top of the egg to the polymer film 29 is from ½” to 1”, and so that the distance “b” from the bottom of the egg to the polymer

film 19 is from ½” to 1”, with a distance of 0.5” preferred.” Furthermore, only a tiny area of the egg is scrutinized, or “typically from about 0.1” to about 0.3” in diameter, with smaller areas said to “typically give better rejection of light reflected off of adjacent eggs”. Id. Therefore, in *Hebrank* the only detection means employed must be extremely close to an egg being measured for temperature, and must be so close as to be inoperable for measuring or detecting any other dimensional characteristics such as height, length, width or other spatial characteristics and the like.

As shown, all of such explicit teaching clearly shows that the *Hebrank* reference is exclusively concerned with and directed only to opacity measurement in eggs by way of only one measurement, that being temperature measurement, and to temperature detection in very small areas of an egg with a temperature measuring means situated in extremely close proximity to an egg during such measurement.

See also, for example, *Hebrank* on page 6, section 0067, reciting, “While preferred light candling systems have been described, any other suitable device for measuring the opacities of eggs may be used in the method and apparatus of the invention” (emphasis added). Further, see section 0068 et seq. of *Hebrank* discussing exclusively the assessment of opacities in eggs, and on page 7, sections 0079 et seq., where it is reported that in accordance with the inventive apparatus eggs are assessed, classified, and sorted with respect to non-live eggs, clear eggs and live eggs, and varying degrees thereof, such as early-dead, early mid-dead, late mid-dead and rot eggs, all in accordance with opacity determination, or candling via temperature measurement.

Thus, as shown in detail above, and, respectfully, directly contrary to the Examiner’s assertions, nowhere may it found in the *Hebrank* disclosure a system or

method for a characterizing and identifying system for food stuffs and product portions and other objects comprising a conveyor means for transport of product or object to be measured to more than one or a plurality of detection regions to detect information selected from several measurements, including height, length, width, dimensional spatial or topological characteristics, color, density, moisture, weight and temperature, such as recited in amended claims 1, 4, 13, 16, and 25, and claims dependent therefrom.

Hebrank's exclusive teaching as to opacity measurement of eggs by way of temperature measurement, the only detection contemplated in this method, in fact teaches away from the claimed invention, or directs one skilled in the art away from arriving at anything resembling applicant's claimed invention of multiple detection of various characteristics of virtually any kind of object on a conveyed system. In further respect, the very close detection distances of an egg from a detector mandated in *Hebrank* and the very small areas measured for temperature will not allow, and in fact would hinder, the detection of spatial geometry or topological characteristics, or height, length and width and the like of a product or object, such as recited in applicant's claims, and would thus never work to provide the advantages and solve the problems conquered by applicant's claimed invention.

For an additional example of *Hebrank* teaching exclusively of only one measurement, that being temperature measurement, for opacity/candling determination, see page 9 referring to FIG. 12 which discloses establishing "a spatial temperature trend", and clearly not dimensional/spatial measurement and means therefore for detecting multiple characteristics of a product or object on a conveyed means. The examiner is

respectfully reminded that such teaching is only provided in applicant's disclosure which cannot be used as a reference against itself, such as for improper hindsight usage.

It is therefore impossible for the *Hebrank* reference to anticipate any of the claims in the instant application as amended under section 102, as every element or feature in a recited claim must be disclosed in a reference. See, for example, *Lewmar Marine v. Varient*, 827 F.2d 744 (Fed. Cir. 1987). As shown, *Hebrank* fails to disclose, inherently or otherwise, and in fact expressly does not disclose for operability purposes, each and every recited element and/or feature in any of applicant's amended claims 1-25.

Response to §103 Rejections

The Examiner has also rejected claims 10 and 22 under 35 USC section 103 (a) as being unpatentable over *Hebrank* in view of *Hamid*, U.S. Patent 4,106,340.

In this rejection the Examiner maintains that *Hebrank* teaches a system including the subject matter disclosed in applicant's claims except that of determining weight, and that *Hamid* discloses determining weight, directing attention to Column 1, lns. 5-33, to provide a "rapid, accurate and reliable" sorting of food and packaging and further referring to Col 1, lns. 14-33. Thus, the Examiner maintains that it would have been obvious for one skilled in the art to combine the teachings of *Hebrank* and *Hamid* to produce a rapid, accurate and reliable method for sorting food and packaging.

A detailed inspection of *Hamid* reveals a method for a continuous and contactless grading and counting of products passing along a conveyor belt. The products may be

varied, such as eggs and tomatoes, and grading may be accomplished by microwave radiometric assessment of the frequency spectrum of radiation temperature emitted by the products under measurement, and then relating such assessment to a non-electrical parameter, such as weight or volume. See generally, for example, Column 1, lns. 5 et seq.

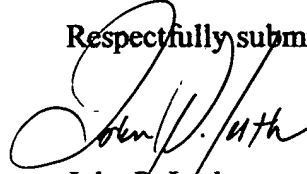
The *Hamid* method is further delineated in stepwise detail on Column 1, lns. 39 et seq., in which one, and only one, detection means on a conveyed line is disclosed, which is a microwave radiometric antenna means having a series of frequencies, and measuring the radiometric output intensity from an object. No other detection means are disclosed or contemplated in *Hamid*, and indeed this reference teaches that a fixed frequency must always be employed in any temperature radiation measurement, referencing Column 2, lns. 20 et seq., which explicitly teaches away from the employ of different detection means situated on a conveyed line for measure of different object characteristics, such as recited in applicant's claims. As a further example of such divergent teaching, the *Hamid* reference, on Column 2, lns. 60 through Column 3, ln. 3, explicitly maintains that *either* information about article size, assuming a basic composition remains the same, *or* information of the composition itself, such as temperature, age, ripeness and color, may be collected, "*but clearly not both*". In direct contrast, the presently claimed invention by way of employing more than one or a plurality of detection means can detect on a conveyed system all of height, weight, length characteristics (and volume) as well as color, moisture content, weight and density characteristics, which provides a distinct advantage over *Hamid*, and which this reference teaches may not be acquired by detection means on a conveyed line.

Thus, the teachings of the *Hebrank* and *Hamid* references are incorrectly combined by the examiner, in that each specifically counsels away from multiple detection means situated on a conveyed line for the detection of multiple characteristics of various objects, such as recited in applicant's claims. As is well known, the prior art must provide to one of ordinary skill the motivation to make a proposed structural modification, or there must be motivation for combining the teachings of the prior art to produce the claimed invention. See, for example, *In re Lalu*, 223 USPQ 1257, 1258 (Fed. Cir. 1984) and *In re Geiger*, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987). In the instant Office Action such motivation by way of teaching is lacking in these references, and the demonstrated teaching away value in these references is further evidence of lack of motivation for the Examiners suggested combination. See, for example, *In re Hedges*, 228 USPQ 685, 687 (Fed. Cir. 1986).

As also shown, even if the teachings of *Hebrank* and *Hamid* references were combined as suggested by the Examiner the result would never arrive at applicant's claimed invention, as *Hebrid* definitely instructs that one may never obtain *both* information of temperature and size of an object on the same conveyed line, such as instantly claimed. Applicant's claimed invention is, therefore, against the accepted wisdom of the prior art, which is further evidence of non-obviousness. *Id.*

In view of all that set forth above the Examiner is respectfully requested to reconsider and remove the rejections of claims 1-25 over 35 USC sections 102 and 103, and to find allowable subject matter in the pending claims. A timely notice of allowance is respectfully requested to be issued in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John P. Luther". The signature is fluid and cursive, with a large initial "J" and a stylized "L".

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